

FIRST REGULAR SESSION

# HOUSE BILL NO. 380

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HOPPE AND HOSMER (Co-sponsors).

Read 1<sup>st</sup> time January 16, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1040L.011

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### AN ACT

To repeal sections 149.015, 149.071, 407.927, 407.929 and 407.931, RSMo 2000, relating to sale of tobacco products to minors, and to enact in lieu thereof ten new sections relating to the same subject, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 149.015, 149.071, 407.927, 407.929 and 407.931, RSMo 2000, are  
2 repealed and ten new sections enacted in lieu thereof, to be known as sections 149.015, 149.071,  
3 407.924, 407.926, 407.927, 407.928, 407.929, 407.931, 407.933 and 407.934, to read as follows:

149.015. 1. A tax shall be levied upon the sale of cigarettes at an amount equal to eight  
2 and one-half mills per cigarette, until such time as the general assembly appropriates an amount  
3 equal to twenty-five percent of the net federal reimbursement allowance to the health initiatives  
4 fund, then the tax shall be six and one-half mills per cigarette beginning July first of the fiscal  
5 year immediately after such appropriation. As used in this section, "net federal reimbursement  
6 allowance" shall mean that amount of the federal reimbursement allowance in excess of the  
7 amount of state matching funds necessary for the state to make payments required by subsection  
8 1 of section 208.471, RSMo, or, if the payments exceed the amount so required, the actual  
9 payments made for the purposes specified in subsection 1 of section 208.471, RSMo.

10 2. The tax shall be evidenced by stamps which shall be furnished by and purchased from  
11 the director or by an impression of the tax by the use of a metering machine when authorized by  
12 the director as provided in this chapter, and the stamps or impression shall be securely affixed  
13 to one end of each package in which cigarettes are contained. All cigarettes must be stamped  
14 before being sold in this state.

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15           3. Cigarette tax stamps shall be purchased only from the director. All stamps shall be  
16 purchased by the director in proper denominations, shall contain such appropriate wording as the  
17 director may prescribe, and shall be of such design, character, color combinations, color changes,  
18 sizes and material as the director may, by [his] rules and regulations, determine to afford the  
19 greatest security to the state. It shall be the duty of the director to manufacture or contract for  
20 revenue stamps required by this chapter; provided that if the stamps are contracted for, the  
21 manufacturer thereof shall be within the jurisdiction of the criminal and civil courts of this state,  
22 unless the stamps cannot be obtained in this state at a fair price or of acceptable quality. If  
23 stamps are manufactured outside of the state, the director shall take any precautions which he  
24 deems necessary to safeguard the state against forgery and misdelivery of any stamps. The  
25 director may require of the manufacturer from whom stamps are purchased a bond in an amount  
26 to be determined by him commensurate with the monetary value of the stamps, containing such  
27 conditions as he may deem necessary in order to protect the state against loss.

28           4. It shall be the intent of this chapter that the impact of the tax levied hereunder be  
29 absorbed by the consumer or user and when the tax is paid by any other person, the payment shall  
30 be considered as an advance payment and shall thereafter be added to the price of the cigarettes  
31 and recovered from the ultimate consumer or user with the person first selling the cigarettes  
32 acting as an agent of the state for the payment and collection of the tax to the state, except that  
33 in furtherance of the intent of this chapter no refund of any tax collected and remitted by a  
34 retailer upon gross receipts from a sale of cigarettes subject to tax [under] **pursuant to** this  
35 chapter shall be claimed [under] **pursuant to** chapter 144, RSMo, for any amount illegally or  
36 erroneously overcharged or overcollected as a result of imposition of sales tax by the retailer  
37 upon amounts representing the tax imposed [under] **pursuant to** this chapter **and any such tax**  
38 **shall either be refunded to the person who paid such tax or paid to the director. The**  
39 **director may assess any retailer for any tax illegally or erroneously overcharged or**  
40 **overcollected unless such tax has been refunded to the person who paid such tax.**

41           5. In making sales of cigarettes in the state, a wholesaler shall keep a record of the  
42 amount of tax on his gross sales. The tax shall be evidenced by appropriate stamps attached to  
43 each package of cigarettes sold.

44           6. The tax on any cigarettes contained in packages of four, ten, twenty or similar  
45 quantities to be used solely for distribution as samples shall be computed on a per cigarette basis  
46 at the rate set forth in this section, and payment of the tax shall be remitted to the director at such  
47 time and in such manner as he may prescribe.

48           7. The revenue generated by the additional two mills tax imposed effective August 13,  
49 1982, less any three percent reduction allowed [under] **pursuant to** the provisions of section  
50 149.021, shall be placed in a separate fund entitled "The Fair Share Fund". Such moneys in the

51 fair share fund shall be distributed to the schools in this state on an average daily attendance  
52 basis, except as provided in section 163.031, RSMo.

53 8. The revenue generated by the additional two mills tax imposed effective October 1,  
54 1993, less any three percent reduction allowed [under] **pursuant to** the provisions of section  
55 149.021, shall be deposited in the health initiatives fund created in section 191.831, RSMo.  
56 When the general assembly appropriates an amount equal to twenty-five percent of the net  
57 federal reimbursement allowance to the health initiatives fund, this subsection shall expire. The  
58 additional two mills tax levied [under] **pursuant to** this section shall not apply to an amount of  
59 stamped cigarettes in the possession of licensed wholesalers on October 1, 1993, up to thirty-five  
60 percent of the total cigarette sales made by such licensed wholesaler during the six months  
61 immediately preceding October 1, 1993.

149.071. 1. Any person who shall, without the authorization of the director of revenue,  
2 make or manufacture, or who shall falsely or fraudulently forge, counterfeit, reproduce, restore,  
3 or process any stamp, impression, copy, facsimile, or other evidence for the purpose of indicating  
4 the payment of the tax levied by this chapter, or who shall knowingly or by a deceptive act use  
5 or pass, or tender as true, or affix, impress, or imprint, by use of any device, rubber stamp or by  
6 any other means, or any package containing cigarettes, any unauthorized, false, altered, forged,  
7 counterfeit or previously used stamp, impressions, copies, facsimilies or other evidence of  
8 cigarette tax payment, shall be guilty of a felony and, upon conviction, shall be punished by  
9 imprisonment by the state department of corrections and human resources for a term of not less  
10 than two years nor more than five years.

11 **2. It shall be unlawful for any person:**

12 **(1) To sell or distribute in this state; to acquire, hold, own, possess or transport for**  
13 **sale or distribution in this state; or to import or cause to be imported into this state for sale**  
14 **or distribution in this state:**

15 **(a) Any cigarettes the package of which:**

16 **a. Bears any statement, label, stamp, sticker or notice indicating that the**  
17 **manufacturer did not intend the cigarettes to be sold, distributed or used in the United**  
18 **States, including but not limited to labels stating "For Export Only", "U.S. Tax-Exempt",**  
19 **"For Use Outside U.S." or similar wording; or**

20 **b. Does not comply with:**

21 **(i) All requirements imposed by or pursuant to federal law regarding warnings and**  
22 **other information on packages of cigarettes manufactured, packaged or imported for sale,**  
23 **distribution or use in the United States, including but not limited to the precise warning**  
24 **labels specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Section**  
25 **1333; and**

- 26           (ii) All federal trademark and copyright laws;
- 27           (b) Any cigarettes imported into the United States in violation of 26 U.S.C. Section
- 28 5754, or any other federal law or implementing federal regulations;
- 29           (c) Any cigarettes that such person otherwise knows or has reason to know the
- 30 manufacturer did not intend to be sold, distributed or used in the United States; or
- 31           (d) Any cigarettes for which there has not been submitted to the Secretary of the
- 32 U.S. Department of Health and Human Services the list or lists of the ingredients added
- 33 to tobacco in the manufacture of such cigarettes as required by the Federal Cigarette
- 34 Labeling and Advertising Act, 15 U.S.C. Section 1335a;
- 35           (2) To alter the package of any cigarettes prior to sale or distribution to the
- 36 ultimate consumer so as to remove, conceal or obscure:
- 37           (a) Any statement, label, stamp, sticker or notice described in subparagraph a. of
- 38 paragraph (a) of subdivision (1) of this subsection;
- 39           (b) Any health warning that is not specified in or does not conform with the
- 40 requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Section
- 41 1333; or
- 42           (3) To affix any tax stamp to the package of any cigarettes described in subsection
- 43 1 of this section or altered in violation of this subsection.
- 44           3. On the first business day of each month, each person licensed to affix the state
- 45 tax stamp to cigarettes shall file with the department for all cigarettes imported into the
- 46 United States to which such person has affixed the tax stamp in the preceding month:
- 47           (1) A copy of:
- 48           (a) The permit issued pursuant to the Internal Revenue Code, 26 U.S.C. Section
- 49 5713, to the person importing such cigarettes into the United States allowing such person
- 50 to import such cigarettes; and
- 51           (b) The customs form containing, with respect to such cigarettes, the internal
- 52 revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms;
- 53           (2) A statement signed by such person under penalty of perjury which shall be
- 54 treated as confidential by the commissioner and exempt from disclosure pursuant to
- 55 chapter 610, RSMo, identifying the brand and brand styles of all such cigarettes, the
- 56 quantity of each brand style of such cigarettes, the supplier of such cigarettes and the
- 57 person or persons, if any, to whom such cigarettes have been conveyed for resale, and a
- 58 separate statement signed by such person under penalty of perjury, which shall not be
- 59 treated as confidential or exempt from disclosure, separately identifying the brands and
- 60 brand styles of such cigarettes;
- 61           (3) A statement signed by an officer of the manufacturer or importer under penalty

62 of perjury certifying that the manufacturer or importer has complied with:

63 (a) The package health warning and ingredient reporting requirements of the  
64 Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sections 1333 and 1335a, with  
65 respect to such cigarettes; and

66 (b) Sections 196.1000 and 196.1003, RSMo, including a statement indicating  
67 whether the manufacturer is or is not a participating tobacco manufacturer within the  
68 meaning of sections 196.1000 and 196.1003, RSMo.

69 4. Any person who sells or holds for sale cigarette packages to which is affixed a tax  
70 stamp in violation of this section is guilty of a class D felony.

71 5. The department of revenue may suspend or revoke a wholesale license of any  
72 person who sells or holds for sale cigarette packages to which is affixed a tax stamp in  
73 violation of this section and impose a civil penalty in an amount not to exceed the greater  
74 of five hundred percent of the retail value of the cigarettes involved or five thousand  
75 dollars.

76 6. Cigarettes that are acquired, held, owned, possessed, transported in, imported  
77 into, or sold or distributed in this state in violation of this section shall be subject to seizure  
78 and forfeiture, with all such cigarettes so seized and forfeited destroyed. Such cigarettes  
79 shall be deemed contraband whether the violation of this section is knowing or otherwise.

80 7. A violation of this section is a deceptive act or practice pursuant to this section.  
81 In addition to any other remedy provided by this section or other law, any person may  
82 bring an action for:

83 (1) Appropriate injunctive or other equitable relief;

84 (2) Actual damages, if any, sustained by reason of a violation of this section; and

85 (3) As determined by the court, interest on such damages from the date of the  
86 complaint, taxable costs and reasonable attorney's fees.

87

88 If the trier of fact finds that the violation is egregious, the judgment may be increased to  
89 an amount not in excess of three times the actual damages sustained by reason of such  
90 violation.

91 8. The provisions of this section shall not apply to:

92 (1) Cigarettes allowed to be imported or brought into the United States for personal  
93 use; and

94 (2) Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free  
95 sales enterprise in accordance with 19 U.S.C. Section 1555(b) and any implementing  
96 regulations; provided, however, that this section shall apply to any such cigarettes that are  
97 brought back into the customs territory for resale within the customs territory.

98           **9. For the purposes of this section, the term "importer" means importer as such**  
99 **term is defined in 26 U.S.C. Section 5702(1).**

100           **10. If any provision of this section or its application to any person or circumstance**  
101 **is held invalid, the remainder of this section or the application of the provision to other**  
102 **persons or circumstances shall not be affected.**

**407.924. 1. The division of liquor control within the department of public safety**  
2 **shall implement and enforce the provisions of sections 407.925 to 407.934.**

3           **2. Beginning January 1, 2003, the division of liquor control shall submit an annual**  
4 **report to the general assembly on the effectiveness of sections 407.925 to 407.934 in**  
5 **reducing tobacco possession by minors and the enforcement activities by the division for**  
6 **violations of sections 407.925 to 407.934.**

**407.926. 1. Any person who sells tobacco products shall deny the sale of such**  
2 **tobacco products to any person who the seller believes is less than eighteen years of age.**

3           **2. Any person or entity who sells or distributes tobacco products by mail or**  
4 **through the Internet in this state in violation of subsection 1 of this section shall be assessed**  
5 **a fine of one thousand dollars for the first violation and two thousand five hundred dollars**  
6 **for each subsequent violation.**

          407.927. The owner of an establishment at which tobacco products or rolling papers are  
2 sold at retail or through vending machines shall cause to be prominently displayed in a  
3 conspicuous place at every display from which tobacco products are sold and on every vending  
4 machine where tobacco products are purchased a sign that shall:

5           (1) Contain in red lettering at least one-half inch high on a white background the  
6 following: "It is a violation of state law for cigarettes or other tobacco products to be sold **or**  
7 **otherwise provided** to any person under the age of eighteen **or for such person to purchase,**  
8 **attempt to purchase or possess cigarettes or other tobacco products**"; and

9           (2) Include a depiction of a pack of cigarettes at least two inches high defaced by a red  
10 diagonal diameter of a surrounding red circle, and the words "Under 18".

**407.928. No person shall sell such individual packages containing tobacco products**  
2 **unless such packages satisfy one of the following conditions prior to the time of sale:**

3           **(1) It is sold through a vending machine; or**

4           **(2) It is displayed behind the check-out counter or it is within the unobstructed line**  
5 **of sight of the sales clerk or store attendant.**

          407.929. 1. A person selling tobacco products or rolling papers or distributing tobacco  
2 product samples shall require proof of age from a prospective purchaser or recipient if an  
3 ordinary person would conclude on the basis of appearance that such prospective purchaser or  
4 recipient may be under the age of eighteen.

5           2. The operator's or chauffeur's license issued pursuant to the provisions of section  
6 **302.177, RSMo, or the operator's or chauffeur's license issued pursuant to the laws of any**  
7 **state or possession of the United States to residents of those states or possessions, or an**  
8 **identification card as provided for in section 302.181, RSMo, or the identification card**  
9 **issued by any uniformed service of the United States, or a valid passport shall be presented**  
10 **by the holder thereof upon request of any agent of the division of liquor control or any**  
11 **registrant pursuant to section 407.934, or any agent or employee of such registrant, for the**  
12 **purpose of aiding the registrant, agent or employee to determine whether or not the person**  
13 **is at least eighteen years of age when such person desires to purchase or possess tobacco**  
14 **products procured from a registrant. Upon such presentation, the registrant, or**  
15 **registrant's agent or employee shall compare the photograph and physical characteristics**  
16 **noted on the license, identification card or passport with the physical characteristics of the**  
17 **person presenting the license, identification card or passport.**

18           3. Any person who shall, without authorization from the department of revenue,  
19 reproduce, alter, modify or misrepresent any chauffeur's license, motor vehicle operator's  
20 license or identification card shall be deemed guilty of a misdemeanor and upon conviction  
21 shall be subject to a fine of not more than one thousand dollars, and confinement for not  
22 more than one year, or by both such fine and imprisonment.

23           4. Reasonable reliance on proof of age or on the appearance of the purchaser or recipient  
24 shall be a defense to any action for a violation of subsections 2 and 3 of section 407.931. No  
25 person shall be liable for more than one violation of subsections 2 and 3 of section 407.931 on  
26 any single day.

          407.931. 1. It shall be unlawful for any person to engage in tobacco product distribution  
2 to persons under eighteen years of age.

3           2. All vending machines that dispense tobacco products shall be located within the  
4 unobstructed line of sight and under the direct supervision of an adult responsible for  
5 preventing persons less than eighteen years of age from purchasing any tobacco product  
6 from such machine. By January 1, 2002, all vending machines designed to dispense  
7 tobacco products shall be equipped with a lock-out device to prevent the machines from  
8 being operated until the person responsible for monitoring sales from the machines  
9 disables the lock. Such locking device shall be of a design that prevents it from being left  
10 in an unlocked condition and which will allow only a single sale when activated. A locking  
11 device shall not be required on machines that are located in areas where persons less than  
12 eighteen years of age are not permitted or prohibited by law. The registration required in  
13 section 407.934 for any owner who is subject to and in violation of the provisions of this  
14 subsection or subdivision (1) of section 407.927 shall be suspended until the division of

15 **liquor control determines that such machine is brought into compliance. A determination**  
16 **of noncompliance may be made by a local law enforcement agency, the highway patrol, the**  
17 **division of liquor control or the department of mental health.**

18 **3. No person shall sell, provide or distribute any tobacco product or [distribute any**  
19 **tobacco product or] rolling papers to any minor, or any individual cigarettes to any person in**  
20 **this state. This subsection shall not apply to the distribution by family members on property that**  
21 **is not open to the public.**

22 **[3.] 4. Any person, including, but not limited to, a sales clerk, owner or operator who**  
23 **violates subsection 1 [or], 2 or 3 of this section or section 407.927 shall be [fined] penalized as**  
24 **follows:**

25 **(1) For the first offense, twenty-five dollars;**

26 **(2) For the second offense, one hundred dollars;**

27 **(3) For a third and subsequent offense, two hundred fifty dollars. For a fourth and**  
28 **subsequent offense, in addition to a fine of two hundred fifty dollars, a five-day suspension**  
29 **of the establishment's registration or license to sell tobacco products may be imposed.**  
30

31 **The establishment shall also be fined in an amount equivalent to the fines listed in**  
32 **subdivisions (1), (2) and (3) of this subsection. The division of liquor control in the**  
33 **department of public safety shall enforce the provisions of this subsection and subsection**  
34 **5 of this section.**

35 **5. Any owner, operator or corporate entity who is considered the general owner or**  
36 **operator of the outlet where tobacco products are available for sale who violates subsection**  
37 **3 of this section, in addition to the fines established in subsection 4 of this section, shall be**  
38 **penalized in the following manner:**

39 **(1) For the first offense, a reprimand shall be issued by the division of liquor**  
40 **control;**

41 **(2) For the second offense, the division of liquor control shall issue a citation**  
42 **prohibiting the outlet from selling tobacco products for a twenty-four hour period;**

43 **(3) For the third offense, the division of liquor control shall issue a citation**  
44 **prohibiting the outlet from selling tobacco products for a forty-eight hour period;**

45 **(4) For the fourth and any subsequent offenses, the division of liquor control shall**  
46 **issue a citation prohibiting the outlet from selling tobacco products for a five-day period.**

47 **6. Any person who is considered the general owner or operator of the outlet where**  
48 **tobacco products are available for sale who violates subsection 3 of this section shall not**  
49 **be penalized pursuant to this section if such person documents the following:**

50 **(1) An employee training program was in place to provide the employee with**



51 **information on the state and federal regulations regarding tobacco sales to minors. Such**  
52 **training program must be attended by all employees who sell tobacco products to the**  
53 **general public;**

54 **(2) A signed statement by the employee stating that the employee has attended**  
55 **training and understands the state laws and federal regulations regarding the sale of**  
56 **tobacco to minors;**

57 **(3) Such training meets the minimum training criteria established by the**  
58 **department of mental health.**

59 **7. The exemption in subsection 6 of this section shall not apply to any person who**  
60 **is considered the general owner or operator of the outlet where tobacco products are**  
61 **available for sale if:**

62 **(1) Four or more violations of subsection 3 of this section occur within a one-year**  
63 **period; or**

64 **(2) Such person knowingly violates or knowingly allows his or her employees to**  
65 **violate subsection 3 of this section.**

66 **[4.] 8. If a sale is made by an employee of the owner of an establishment in violation of**  
67 **sections 407.925 to 407.932, both the employee and the owner shall be guilty of an offense**  
68 **established in subsections 1, 2 and 3 of this section. If a vending machine is in violation of**  
69 **section 407.927, the owner of the establishment shall be guilty of an offense established in**  
70 **subsection 1, 2 and 3 of this section. If a sample is distributed by an employee of a company**  
71 **conducting the sampling, such employee shall be guilty of an offense established in subsections**  
72 **1, 2 and 3 of this section.**

**407.933. 1. No person less than eighteen years of age shall purchase, attempt to**  
2 **purchase or possess cigarettes or other tobacco products unless such person is an employee**  
3 **of a seller of cigarettes or tobacco products and is in such possession to effect a sale in the**  
4 **course of employment.**

5 **2. Any person less than eighteen years of age shall not misrepresent his or her age**  
6 **to purchase cigarettes or tobacco products.**

7 **3. Any person who violates the provisions of this section is guilty of a class C**  
8 **misdemeanor and shall have any cigarettes or tobacco products in such person's possession**  
9 **confiscated. For a second or subsequent violation of this section or for a failure to pay any**  
10 **finest or penalties assessed as a result of a violation of this section, the court may order such**  
11 **person to complete a term of community service under the supervision of the court or an**  
12 **organization selected by the court.**

**407.934. 1. No person shall sell cigarettes or tobacco products unless the person has**  
2 **a retail sales tax license and is registered to sell tobacco products in the state of Missouri.**

3 Any establishment located in a city or county that may suspend or revoke a license or  
4 registration for the sale of tobacco to minors or impose a fine for sales to minors shall not  
5 be assessed a penalty for the same offense by both the state and the city or county. In such  
6 case, the state law shall take precedence.

7 2. Beginning January 1, 2002, the department of revenue shall permit person to  
8 register through the Internet or by including a place on all sales tax returns filed pursuant  
9 to section 144.100, RSMo, for the filer to designate himself or herself as a seller of tobacco  
10 products and to provide a list of all locations where the filer sells such products.

11 3. Every person registered to sell tobacco products in the state of Missouri shall  
12 prominently display such registration at each location where tobacco products are sold by  
13 the registrant.

14 4. On or before July first of each year, the department of revenue shall make  
15 available to the division of liquor control and the department of mental health a complete  
16 list of every establishment registered to sell cigarettes and other tobacco products in this  
17 state.

18 5. The department of mental health shall have the authority to inspect stores and  
19 tobacco outlets for compliance with all laws related to access of tobacco products to minors  
20 and to refer all violations to the division of liquor control for processing.

21 6. Any establishment that knowingly sells cigarettes or tobacco products to minors  
22 without being registered with the department of revenue pursuant to this section is guilty  
23 of a class A misdemeanor.